

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2103 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KESHRISING SADASING RATHOD

Versus

SALES TAX COMMISSIONER

Appearance :

MR SK BUKHARI for the petitioner

MR SP HASURKER for the respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of order: 08/09 /99

C.A.V.ORDER

1. Perused the provisions of the Gujarat Civil Services (Revision of Pay) Rules, 1987, provisions of the Gujarat Civil Services (Revision of Pay) Rules, 1998 and the decision of the division bench of this court on which reliance has been placed by the learned counsel for the petitioner.

2. The petitioner was placed under suspension from the services by order of the respondent dated 1.6.1994.

This suspension has been ordered as a criminal case was pending against the petitioner. Learned counsel for the petitioner does not dispute that criminal case aforesaid is pending till day.

3. The petitioner is praying that as the pay of employees of the State of Gujarat have been revised w.e.f. 1.1.1996 under the Gujarat Civil Services (Revision of Pay) Rules, 1998 his pay may also accordingly be revised in the revised pay-scale and as per revised pay, his suspension allowance may accordingly be revised.

4. Shri S.P.Hasurker on the other hand contends that Division Bench's decision is not of any help to the petitioner in this case as the same has been given in the context of the provisions of the Gujarat Civil Services (Revision of Pay) Rules, 1987. Under the Gujarat Civil Services (Revision of Pay) Rules, 1998 Shri Hasurker submits that there is very specific provision which disentitles the suspended employees from getting the benefits of the revised pay-scale till final orders are passed in the pending departmental inquiry or criminal case.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. I am in full agreement with the contention raised by the learned counsel for the respondents that the Division Bench's decision is not of any help to the petitioner in this case.

7. Rule 7(2)(c) of the Gujarat Civil Services (Revision of Pay) Rules, 1998 provides that where a Government servant is under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay shall be subject to final order in the pending disciplinary proceedings. Learned counsel for the petitioner contended that this clause would have been made applicable where the delinquent officer is placed under suspension in contemplation or pending disciplinary proceedings. He has tried to draw a distinction in between suspension of the delinquent officer in contemplation or pending disciplinary proceedings and suspension pending investigation or trial in criminal case. Though at the first flash this argument appears to be very attractive, but it does not stand to close scrutiny. The provision identical to the provision which is there in the Revised Pay-scale Rules, 1998, is not

there in Revised Pay-scale Rules of 1987. The decision of the Division Bench is based on the Revised Pay-scale Rules of 1987.

8. Rule 5 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 reads as under.:

The delinquent officer can be placed under suspension where the departmental proceeding is contemplated or pending disciplinary proceedings and where any investigation of trial of criminal case is pending.

Learned counsel for the petitioner does not dispute this provision. It is no more res integra that the disciplinary authority can simultaneously proceed against the delinquent officer/employee on self same charges by filing criminal complaint as well as by giving the chargesheet for disciplinary proceedings in an appropriate case. He does not dispute that even after acquittal of the delinquent officer in the criminal case, disciplinary authority has all powers and competence to hold departmental proceedings on self same charges against the delinquent officer. Further, this position of law is also not dispute that in case where there is a conviction of the delinquent officer in the criminal case involving moral turpitude, on his conviction, he can be dismissed or removed from the services without holding any departmental inquiry.

9. Learned counsel for the respondents submits that "pending disciplinary proceedings", as what has been referred in Clause (c) of sub-rule 2 of Rule 7 of the Rules, 1998 has to be read in the context of the aforesaid legal position and provision as contained in rule 5 of the Rules, 1971. I find sufficient justification and merits in this contention of the learned counsel for the respondents. In the Rules of 1998 this provision has been put for some purpose and object and same is clearly borne out from the reading of this rule itself. This rule has been deliberately put in the Rules of 1998 so that the delinquent officers/employees who are under suspension may not get the benefits of the Revised Pay-scale so long as they continued under suspension. The pay of the delinquent officer/employee in the Revised scale of pay as per these rules is subject to the final order in the pending departmental proceedings.

10. Rule 152 of the Bombay Civil Services Rules, 1959 is also another important provision for reference and

consideration. This rule reads as under.

In case where the delinquent officer/employee is discharged or acquitted in the criminal case or where he is exonerated in the disciplinary proceedings, still he may not be entitled for full benefits of the suspension period where the competent authority is satisfied that suspension of the delinquent officer/employee was not wholly unjustified then proper order can be passed denying full benefits to him of the suspension period.

Keeping in view these provisions and the purpose behind Clause (c) of sub-rule 2 of Rule 7 of the Rules, 1998 not to give benefits of the Revised scale of pay to the delinquent officer/employee who is under suspension, "pending the departmental proceedings" in this rule has to be read in the context of the legal position and certainly these provisions will also cover the case of the delinquent officer/employee who has been placed under suspension pending investigation or trial of criminal case. This rule cannot be read as what the learned counsel for the petitioner sought to read it. If, the rule is given the meaning as what the learned counsel for the petitioner contends that only in the case of the delinquent officer / employee who was suspended in contemplation or pending departmental proceedings this rule will apply, which does not seem to be intension of the rule making authority. Otherwise also such meaning which sought to be given by the learned counsel for the petitioner does not spell out from reading of the rule itself. Suspended employee or officer irrespective of the ground on which he is suspended, is a suspended officer/employee and in case these two suspensions are to be taken distinct and separate then it will make hostile discrimination or the rule may be suffered from vice of discrimination and clause (c) of sub-rule 2 of rule 7 of the Rules 1998 will become ultra-vires as being violative of Articles 14 and 16 of the Constitution. It is settled principle of interpretation of statutes, that interpretation which render the statutes to be ultra-vires of the constitution is to be avoided as far as possible.

11. In the Rules of 1971 or BCSR, 1959 nowhere any distinction is made or carved out in between the delinquent officer or employee who has been placed under suspension in contemplation or pending departmental inquiry and or pending investigation or trial of criminal case.

12. After going through the relevant provisions of these three aforesaid rules framed under Article 309 of the Constitution namely Bombay Civil Services Rules, 1959, Gujarat Civil Services (Discipline & Appeal) Rules, 1971 and the Gujarat Civil Services (Revision of Pay) Rules, 1998 I am satisfied that under clause (c) of sub-rule 2 of rule 7 of the Rules 1998, the case of the delinquent officer/ employee who has been suspended pending investigation or trial of criminal case is covered. As a result of this discussion the claim made by the petitioner in this Special Civil Application does not have any legal sanctity. If this claim of the petitioner is accepted then what this court will do to give the benefits to him for which otherwise he is not entitle under the Rules, 1998. This court will not sitting under Article 226 of the Constitution perpetuate any illegality nor it will give any rule or direction to the respondent to act contrary to the rules framed under Article 309.

13. In the result, this Special Civil Application fails and the same is dismissed. Notice discharged. However, in the facts of this case parties are directed to bear their own costs of this litigation.

(S.K.Keshote,J.)

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